

2025 SEP 14 P 2:17

## CENTRAL DIVISION

y.

Defendants.

District Judge Paul G. Cassell  
Magistrate Judge David Nuffer

Mr. Hall is named as a defendant in the summons. However, he is not named as a defendant in the caption of the complaint, in the section identifying the defendants, or anywhere

<sup>2</sup>See Exhibit A to Memorandum in Support of Randy Hall's Motion to Quash or, in the Alternative, to Dismiss Complaint. (Dkt. #8.)

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in the body of the complaint. Mr. Hall notes that Rule 4(a) of the Federal Rules of Civil Procedure provides that the summons shall "be directed to the defendant." (Emphasis added). Further, under Rule 10(a), the title of the complaint "shall include the names of all the parties." Coe v. United States Dist. Court for the Dist. of Colo., 676 F.2d 411, 414 (10<sup>th</sup> Cir. 1982). If Plaintiff intended that Mr. Hall be a defendant in this case, he has failed to comply with Rule 10(a). See also Linebarger v. Williams, 77 F.R.D. 682, 685 (E.D. Okla. 1977)(stating that "pleadings in which the defendants are not identified by name will not suffice," and collecting cases). Since Mr. Hall is not named as a defendant in the complaint, the court will quash service upon him.

Mr. Hall also contends that the complaint directed to him should be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Dismissal under Rule 12(b)(6) is appropriate where it is apparent that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In order to maintain a claim under section 1983, a plaintiff must allege facts sufficient to show that the defendant deprived him of a federally protected right while acting under color of state law. The defendant must have personally participated in the alleged deprivation. See Durre v. Dempsey, 869 F.2d 543, 548 (10<sup>th</sup> Cir. 1989); Meade v. Grubbs, 841 F.2d 1512, 1527-28 (10<sup>th</sup> Cir. 1988). Further, even a pro se plaintiff has the burden of alleging sufficient facts upon which a recognized legal claim could be based. Hall v. Bellmon, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991);

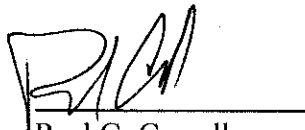
Riddle v. Mondragon, 83 F.3d 1197, 1202 (10<sup>th</sup> Cir. 1996). Plaintiff has not alleged any facts against Mr. Hall upon which a claim could be based.

Courts “have consistently held that, where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted.” Estate of Morris v. Dapolito, 297 F. Supp. 2d 680, 688 (S.D.N.Y. 2004)(quoting Morabito v. Blum, 528 F. Supp. 252, 262 (S.D.N.Y. 1981); accord Potter v. Clark, 497 F.2d 1206, 1207 (7th Cir.1974) (“Where a complaint alleges no specific act or conduct on the part of the defendant and the complaint is silent as to the defendant except for his name appearing in the caption, the complaint is properly dismissed, even under the liberal construction to be given pro se complaints.”); Linebarger, 77 F.R.D. at 684-85; "Child" v. Beame, 417 F.Supp. 1023, 1025 (S.D.N.Y. 1976). Since the complaint fails to name Mr. Hall as a defendant in the caption, does not name him in the body of the complaint, and contains no allegations against him whatsoever, the complaint should be dismissed as to him.

**ORDER**

Randy Hall's motion to dismiss (Dkt. # 7) under Fed. R. Civ. P. 12(b)(6) is GRANTED,  
and service on him is quashed.

DATED this 14th day of September, 2004.

A handwritten signature in black ink, appearing to read "P. G. Cassell", is written over a horizontal line.

Paul G. Cassell  
United States District Judge

United States District Court  
for the  
District of Utah  
September 15, 2004

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00632

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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